

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STEVE RECTOR,

Plaintiff,

v.

E & E FOODS, et al.,

Defendants.

CASE NO. C12-1527 MJP

ORDER DENYING MOTION TO  
STAY

This matter comes before the Court on Plaintiff Steve Rector's motion to stay proceedings pending resolution of an interlocutory appeal. (Dkt. No. 29.) The Court considered the motion, the response (Dkt. No. 33) and all related documents. Plaintiff did not submit a reply brief. The Court DENIES the motion to stay.

Plaintiff argues a stay is warranted because he has appealed to the Ninth Circuit this Court's Order refusing to strike Defendants' affirmative defense of at will employment. (Dkt. No. 24.) Defendants have since filed a motion to amend their answer to drop the at will employment defense. (Dkt. No. 26.) In this Court's Order granting the motion to amend, the Court noted the appeal was improperly taken under 28 U.S.C. §1292(a)(3) because the Order

1 from which it was taken did not determine any rights or liabilities of the parties. (Dkt. No. 32 at  
2 3.)

3 The Court notes again Plaintiff's appeal was improperly taken from a non-appealable  
4 order. 28 U.S.C. §1292(a)(3) allows for interlocutory appeals of orders in admiralty cases that  
5 determine rights and liabilities of the parties. Seattle-First Nat'l Bank v. Bluewater Partnership,  
6 772 F.2d 565, 568 (9th Cir. 1985). The Order from which Plaintiff's appeal is taken did not  
7 determine any rights or liabilities, rather, it refused to strike an affirmative defense. (Dkt. No.  
8 23.) This is an improper basis for a §1292(a)(3) appeal, and there is no reason to stay the case  
9 under these circumstances.

10 The Court further notes the motion to stay is untimely. Plaintiff filed a notice of appeal  
11 on May 15, 2013, but did not file this motion to stay until July 23, 2013, offering no explanation  
12 of the delay. (Dkt. Nos. 24 and 29.) Plaintiff's motion to stay pending appeal is DENIED.

13 The clerk is ordered to provide copies of this order to all counsel.

14 Dated this 22nd day of August, 2013.

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17 Marsha J. Pechman  
18 Chief United States District Judge  
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